

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SCOTT R. PERREAULT,

Plaintiff,

v.

Case No.: 2:19-cv-812-FtM-38MRM

EXPERIAN INFORMATION
SOLUTIONS, INC.,

Defendant.

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OPINION AND ORDER¹

Before the Court are Plaintiff Scott R. Perreault's original and amended Motion to Deny Removal Petition and Remand to State Court ([Doc. 9](#); [Doc. 19](#)) and Defendant Experian Information Solutions, Inc.'s response ([Doc. 25](#)).

Perreault sued Experian in Florida state court on September 3, 2019, alleging fraud and defamation for including false and unverified information on his credit report. Experian received the Complaint ([Doc. 1-3](#)) on September 9, 2019, and Experian filed its Answer ([Doc. 1-3 at 10](#)) later that month. On October 28, 2019, Perreault filed an Amended Complaint ([Doc. 6](#)), and Experian removed the case to this Court eleven days later ([Doc. 1](#)). Perreault moved to remand because Experian did not remove the case within 30 days of service of the original Complaint. Experian argues that removal was timely because the case was not removable until Perreault filed the Amended Complaint.

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

A defendant in a state action that does not file a notice of removal within thirty days of service of the complaint normally waives the right to remove the case to federal court. [28 U.S.C. § 1446\(b\)\(1\)](#). But when grounds for removal are not apparent from the original complaint, a defendant may file a notice of removal within thirty days of receipt of an amended complaint that states a basis of federal jurisdiction. [28 U.S.C. § 1446\(b\)\(3\)](#).

Experian removed this case under [28 U.S.C. § 1331](#), asserting that Perreault's claims arise under the Federal Fair Credit Reporting Act (FCRA). While the FCRA is not explicitly referenced in either of Perreault's complaints, Perreault concedes that his claims are at least partly based on the FCRA. Experian argues that Perreault failed to make clear exactly what cause of action he was bringing against it in the original Complaint, and that the Amended Complaint revealed that this is an identity theft case covered by the FCRA. Experian's argument is meritless. First, the original Complaint explicitly states that Perreault was the victim of identity theft, an allegation that was omitted from the Amended Complaint. If anything, the Amended Complaint makes it *less* clear that this is an identity theft case. The affirmative defenses Experian raised in its original answer further betray the sincerity of its argument. Experian raised two defenses codified by the FCRA *before* Perreault amended his complaint. One of them—the FCRA's statute of limitations—only applies to FCRA claims.

Any basis for federal jurisdiction in the Amended Complaint was also apparent in the original Complaint. Experian thus waived its right to remove the case when it failed to file a notice of removal within thirty days after receiving the original Complaint.

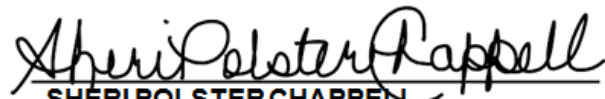
Accordingly, it is now

ORDERED:

Plaintiff Scott R. Perreault's original and amended Motion to Deny Removal Petition and Remand to State Court ([Doc. 9](#); [Doc. 19](#)) is **GRANTED**.

- (1) This case is **REMANDED** to the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida.
- (2) The Clerk is **DIRECTED** to transmit a certified copy of this Order to the Clerk of the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida.
- (3) The Clerk is **DIRECTED** to terminate any pending motions or deadlines and close this case.

DONE and **ORDERED** in Fort Myers, Florida this 3rd day of December, 2019.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record